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Report of the Working Group on Arbitrary Detention on its mission to Azerbaijan*

Note by the Secretariat

At the invitation of the Government, the Working Group on Arbitrary Detention visited Azerbaijan from 16 to 25 May 2016.

The Secretariat has the honour to transmit to the Human Rights Council the report on that visit, which contains the Working Group's findings, conclusions and recommendations relating to the deprivation of liberty in the context of immigration; health-related grounds, including disability; the criminal justice system; and the rights to freedom of opinion and expression, and to peaceful assembly and association.

* The annex to the report is circulated as received, in the language of submission only.

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** Circulated in the language of submission only.

I. Introduction

1. At the invitation of the Government, the Working Group on Arbitrary Detention visited Azerbaijan from 16 to 25 May 2016. The Working Group was represented by its Chair-Rapporteur, Seydou Ba (Senegal), and Vice-Chair, José Antonio Guevara Bermúdez (Mexico), and supported by two staff members of the Office of the High Commissioner for Human Rights.

2. The Working Group extends its gratitude to the Government for the invitation and for its cooperation before and during the visit. Authorities provided the delegation with a significant amount of important information and arranged all requested meetings with senior officials of the executive, legislative and judicial branches of the State. The Working Group wishes to continue the constructive dialogue with the Government of Azerbaijan on the issues presented in this report.

3. The Working Group recognizes the contribution of stakeholders from civil society, particularly representatives of non-governmental organizations, human rights defenders, lawyers, academics and jurists, as well as individuals who have been or are currently deprived of liberty. Additionally, the Working Group wishes to thank the United Nations Resident Coordinator and the United Nations country team in Azerbaijan for their cooperation.

II. Programme of the visit

4. During its visit, the delegation met with authorities in Baku, Ganja and Nakhchivan Autonomous Republic. This included meetings in Baku, Ganja and Nakhchivan city with representatives of the Parliament, the National Supreme Council of Nakhchivan Autonomous Republic, the Ministry of Defence; the Penitentiary Service and the Human Rights and Public Relations Departments of the Ministry of Justice; the Ministry of National Security; the Ministry of Labour and Social Protection of Population; the Ministry of Internal Affairs; and the Ministry of Public Health. The delegation also met with the Office of the Prosecutor of Azerbaijan, its representative in Ganja and the Prosecutor of the Nakhchivan Autonomous Republic, as well as a judge of the Constitutional Court of the Republic of Azerbaijan, the President of the Supreme Court of Nakhchivan Autonomous Republic and the President of the Ganja City Nizami District Court. Furthermore, it met with representatives of the office of the Commissioner for Human Rights of the Republic of Azerbaijan, including the National Preventive Mechanism against torture, the Commissioner for Human Rights of Nakhchivan Autonomous Republic and the President of the Bar Association.

5. The Working Group visited 23 places of deprivation of liberty, including facilities for women, juvenile offenders and migrants, and two psychiatric hospitals as well as institutions for persons with psychosocial and intellectual disabilities (see annex). It interviewed 80 persons deprived of their liberty.

6. During its visit, the Working Group carried out unannounced visits to places of deprivation of liberty. In most places, the delegation received full cooperation from the authorities, including unimpeded access to all parts of the facilities and the ability to confidentially interview persons deprived of their liberty. However, in the buildings of the Temporary Detention Facility of the Main Organized Crime Department, the Investigation Isolator and the Central Police Station, the delegation could not enter several rooms and even complete floors of the buildings that were connected to the detention facilities.

III. Overview of the institutional and legal framework

A. Political system and institutional framework

7. Azerbaijan is a secular, unitary republic based on the rule of law, with a 125-member unicameral Parliament (Milli Mejlis). The Constitution was adopted on 12 November 1995 by a popular referendum, and amended on 24 August 2002 and 18 March 2009.[1] The President is elected for a five-year term. In the latest referendum, the limit of two terms was abolished. The President nominates the Prime Minister; the judges of the Constitutional, Supreme and Appeals Courts; and the General Procurator, with approval by the Milli Mejlis.

8. The judicial system is composed of four levels and consists of a Constitutional Court, Supreme Court, Appeals Courts and general (district and municipal) and specialized courts (local economic courts, military courts and the court for serious criminal cases).

9. First instance civil and penal trials take place in district courts. Judges of preliminary inquiry consider investigations and pretrial detention measures. These judges appoint legal tutors for children deprived of parental care. There are no special family or juvenile courts. All district courts refer to the single Appeals Court in Baku. The Supreme Court represents the third level. Finally, the fourth judiciary level is represented by the Constitutional Court, where complaints, including individual ones, can be presented for review whenever there is a challenge related to the Constitution.

10. The Prosecutor's Office is involved in decisions to detain individuals, and the referral to a court on the continuation of detention should occur automatically within 48 hours from the arrest. The Prosecutor's Office initiates and conducts pretrial investigations, submits the application of criminal cases and has procedural rights to lead the primary investigation in criminal cases. In addition, the Prosecutor's Office controls the implementation of penalties, and enforces laws related to investigations, search and any other case as specified by the relevant legislations. A prosecutor's challenge to a judicial order to release a detained person automatically suspends the order.

11. The National Police Force is an integral part of the Ministry of Internal Affairs, the central executive agency responsible for public security, prevention and exposure of criminal offences.

12. Places of deprivation of liberty fall under the authority of multiple ministries. The Ministry of Justice oversees remand centres and "isolators", penitentiaries and penitentiary hospitals as well as the only closed regime prison in Gobustan. The Ministry of Internal Affairs has authority over temporary and pretrial facilities, detention centres for persons arrested on administrative bases, traffic police departments, police stations, and detention centres for minors, as well as the Temporary Detention Facility of the Main Organized Crime Department. The Ministry of Public Health oversees psychiatric hospitals, psychoneurological dispensaries, Compulsory Treatment Centre and the Narcological Dispensary. In addition, the Ministry of Labour and Social Protection of Population oversees psychoneurological boarding homes. The Ministry of Defence is responsible for guard rooms and the Ministry of National Security directs the Investigation Isolator and Temporary Detention Facility.

B. Judicial guarantees

13. Azerbaijan has detailed legal framework for the prevention of instances of arbitrary deprivation of liberty in different settings. The country is a party to a number of international human rights treaties that recognize the right not to be arbitrarily deprived of liberty, including the International Covenant on Civil and Political Rights with its Optional

[1] Constitution of the Republic of Azerbaijan, 12 November 1995 (including 2009 amendments) http://azerbaijan.az/portal/General/Constitution/doc/constitution_e.pdf

Protocol and Second Optional Protocol, aiming at the abolition of the death penalty; the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment; the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and the Convention on the Rights of Persons with Disabilities with its Optional Protocol. International treaties are recognized as an integral part of the legislative system and are therefore directly applicable.[2] Moreover, the Constitution establishes that "rights and liberties of a person and citizen listed in the present Constitution are implemented in accordance with international treaties [to which the Republic of Azerbaijan] is one of the parties".[3]

14. The Constitution outlines safeguards that apply during detention and trial. From the moment of arrest, detention or accusation of a crime, accused persons have a right to legal advice which is provided by the competent State authorities,[4] and detained individuals have the right to be immediately informed of their rights, the reason for their detention and the initiation of criminal proceedings.[5] There is a presumption of innocence until proven guilty.[6] Evidence obtained in violation of the law cannot be used when administering justice[7] and individuals may not be forced to testify against themselves or close relatives.[8] If State bodies or officials commit criminal or illegal action against individuals, such individuals are entitled to compensation for any subsequent losses.[9] Furthermore, article 46 of the Constitution reinforces the express prohibition of torture and ill-treatment.

15. The Criminal Code also makes specific reference to legal safeguards that should be observed in detention. Namely, it prohibits the deliberate excessive measures that cause harm to a person who has committed a crime during his or her detention, the deliberate murder of an individual in detention, if this action exceeds what is necessary for defence, and deliberately causing harm in excess of what is necessary to detain a person. Torture is defined as an offence in the Criminal Code and the use of any evidence obtained through torture is prohibited.[10]

16. The Code of Criminal Procedure spells out duties of prosecuting authorities vis-à-vis detained persons, including the obligation to provide opportunities for the person from the outset of arrest to meet in private and in confidence with his or her lawyer[11] and the obligation not to keep a person detained for more than 48 hours without a charge.[12]

17. In addition to article 60 of the Constitution, article 34.6.5 of the Constitutional Law guarantees the right to submit complaints, particularly the right to file a complaint before the Constitutional Court, about any State act or decision that violates human rights.

18. The Constitutional Law on the Human Rights Commissioner (Ombudsman) of the Republic of Azerbaijan regulates the activities of the National Preventive Mechanism. The independence of the Ombudsman is stipulated in article 5. The Commissioner is elected by a majority vote of the Milli Mejlis, which may choose from among three candidates nominated by the President.[13] The activities of his or her office are financed from the State budget.[14]

19. Designated as the National Preventive Mechanism by the Presidential Decree of 13 January 2009, the Commissioner for Human Rights publishes annual reports focused on treatment of detainees and detention conditions, as well as on the activities of detainees.

[2] Article 148 of the Constitution.
[3] Ibid., art. 12 (II).
[4] Ibid., art. 61.
[5] Ibid., art. 67.
[6] Ibid., art. 63.
[7] Ibid.
[8] Ibid., art. 66.
[9] Ibid., art. 68.
[10] Article 293 of the Criminal Code.
[11] Article 153.2.5 of the Code of Criminal Procedure.
[12] Ibid., art. 153.2.11.
[13] Article 2.1 of the Constitutional Law on the Human Rights Commissioner.
[14] Ibid., art. 19.

The structure, staff listing and expenditure estimates of central and regional centres are determined by the Commissioner, as are staff appointments and dismissals. The National Preventive Mechanism has the right to access any place of deprivation of liberty, both with and without prior notification. During these visits, the staff can meet and interview detainees or any other person who may provide relevant information. Regular visits are pre-planned in an annual schedule and approved by the Commissioner. Ad hoc visits are carried out to follow up on the recommendations made to the authorities and to prevent and monitor reprisals.

20. In addition to the National Preventive Mechanism, the Public Affairs Committee under the Ministry of Justice, which consists of non-governmental organizations, also monitors places of detention.

IV. Findings

A. Legislative developments

21. The Working Group would like to highlight that in 2006, Azerbaijan launched a project of prison reform, in cooperation with the Council of Europe and the European Commission, aimed at aligning its penitentiary service legislation with European standards, addressing prison mismanagement and supporting training facilities as well as policies and procedures for prisoners' resettlement. To this end, the Government undertook significant efforts to improve detention conditions by building new facilities and modernizing existing centres.

22. The Working Group also acknowledges efforts to modernize the judicial system, in particular the joint initiative with the Council of Europe aimed at enhancing the accessibility of courts and the efficiency of the administration of justice, with a specific focus on increasing judicial independence and raising public confidence in the courts.

23. The Working Group notes that Azerbaijan amended several legislations to comply with the European Charter on the statute for judges. Azerbaijan also adopted rules for the selection of judges and the Ethical Code of Judicial Conduct. The Presidential Order on the Modernization of the Judiciary was issued in 2006. Additionally, the Law on the Rights and Freedoms of Individuals Kept in Detention Facilities, amended in 2012 and 2016, regulates the rights of detained persons in line with the Code of Criminal Procedure.

24. The Constitutional Law regulating the realization of human rights and freedoms was adopted in 2002 to bring the legislation of Azerbaijan into conformity with the European Convention for the Protection of Human Rights and Fundamental Freedoms. Article 4 of the Law guarantees legal safeguards for any person deprived of liberty, ranging from the legality of arrest to court procedure.

25. Moreover, on 24 June 2011, the President signed the Decree on implementation of the Constitutional Law on the Commissioner for Human Rights (Ombudsman) with new amendments that expressly provide that the Commissioner "fulfil[s] the functions of the National Preventive Mechanism in accordance with the Optional Protocol to the ... Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment".[17] The decree also provided that the Commissioner has the ability to undertake regular and ad hoc visits to all places of detention deemed necessary without prior notice.[18]

B. Deprivation of liberty in the context of immigration

26. The matters concerning immigration are regulated by the Constitution, international treaties, national laws and by-laws. The Constitution stipulates that foreigners have the

[17] Article 1.2 of the Decree on Implementation of the Constitutional Law on the Commissioner for Human Rights (Ombudsman).

[18] Ibid., art. 12.2.1.

same rights and duties as citizens, unless otherwise prescribed by law or by international agreements ratified by the State. In 1999, Azerbaijan acceded to the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families. Within the domestic legal framework, there is a Migration Code that provides a comprehensive system regulating immigration and emigration.

27. This Migration Code, approved in 2013, stipulates that foreigners or stateless persons seeking to avoid leaving the territory are detained in compliance with the court decision issued on the basis of appeal from the relevant executive authority. They are then placed in detention centres for irregular migrants until expulsion. These persons can also be placed voluntarily in detention centres.

28. The State Migration Service oversees the system of migration management, including enforcement of sanctions against irregular migrants. Expulsion of non-immigrant foreigners can also be ordered by the Ministry of Internal Affairs or a court in relation to foreigners who have infringed relevant legislation. Individuals are granted 48 hours for independent departure, which can be extended in justified cases. Failure to depart within the time limit leads to detention, a court-ordered expulsion and an absolute ban on entry.

29. During its visit to the Detention Centre for Irregular Migrants in Kurdakhani, the Working Group met migrants of different nationalities. It observed that asylum seekers whose status had not yet been settled were placed in the facility together with convicts who had served their sentence and were awaiting their voluntary return to their country of origin.

30. Despite the information received from authorities that migrants were free to leave the centre once they had made the relevant application, the delegation observed that only one of the seven interviewed persons had effectively exited and returned to the facility, while the others were not aware of such a possibility. In the facility visited, information on the right to exit was not available. The Working Group notes that in order for a facility to be truly open, it is important that authorities explain, in a language that migrants understand, the open nature of holding facilities and thus make the right to leave the facility practically enforceable, as otherwise such facilities become de facto detention facilities.

C. Deprivation of liberty of persons on the basis of health-related grounds and disability

31. The legislation of Azerbaijan allows the deprivation of liberty based on disability, involuntary hospitalization and forced institutionalization, including of children and adults with intellectual and psychosocial disabilities.[17] Moreover, the Law on Protection of Health of the Population allows hospitalization, control and isolation of "persons suffering from mental disorder or illness" and of people who have committed socially dangerous acts without requiring their consent or consent of their legal representative. The decision to provide such medical assistance can be taken by a physician without the consent of the persons and their legal representative or a court order.[18] The Law on the Rights of the Child also allows for the deprivation of liberty and institutionalization on the basis of disability, including psychosocial or intellectual disability.

32. The prohibition of disability-based discrimination is not incorporated into the Constitution or any domestic legislation in Azerbaijan. Furthermore, the national legal framework contains derogatory terminology referring to persons with disabilities.[19]

33. Article 14 of the Convention on the Rights of Persons with Disabilities provides that States parties shall ensure that persons with disabilities are not deprived of their liberty unlawfully or arbitrarily and that the existence of a disability shall not justify deprivation of liberty. Azerbaijan is a party to the Convention and its Optional Protocol, having ratified both instruments without reservations in 2009. The Working Group observes that the

[17] Articles 93-99 of the Criminal Code.
[18] Article 28 of the Law on Protection of the Health of the population.
[19] See articles 92 and 229 of the Code of Criminal Procedure and article 28.8 of the Civil Code.

country's ongoing legislative reforms provide an opportunity for expressly incorporating these international standards into national legislation.

34. Institutions for persons with disabilities are overseen by the Ministry of Labour and Social Protection of Population and the Ministry of Education. There are seven institutions for adults and two institutions for children, housing 1,050 individuals, under the Ministry of Labour and Social Protection of Population.[20] There are 12 institutions under the Ministry of Education. However, the Working Group was not able to access statistics on the number of individuals with disabilities in these institutions. Moreover, there are a number of psychiatric care institutions under the Ministry of Public Health.

35. The Working Group recalls that the term "deprivation of liberty" extends to psychiatric or other medical facilities or any other facility where individuals remain under surveillance and which they are not free to leave at will. Furthermore, the existence of a disability shall never in itself justify deprivation of liberty, as stipulated in article 14 of the Convention on the Rights of Persons with Disabilities. Nevertheless, during its visit, the delegation observed persons with psychosocial and other disabilities being deprived of their liberty in institutions under the aforementioned Ministries.

36. The delegation visited psychoneurological centres under the Ministry of Labour and Social Protection of Population, and received information from authorities that individuals are deprived of liberty for prolonged periods of time, sometimes for their entire life, solely on the basis of an actual or perceived disability. For instance, the Working Group met a teenager who was brought to a psychoneurological centre by one of her parents and had already spent eight years in the institution at the time of the visit. The only explanation by the personnel about the condition of this adolescent patient was "being nervous and having difficulties to establish communication with others", translated into a diagnosis of "mental retardation".

37. The Working Group was particularly alarmed to discover, in the list of persons held in the Psychoneurological Boarding Home No. 8 in Ganja, that a woman had been placed there because of an ovarian cyst, another because of hearing impairments and several other women because of their age or because they had no caretaker.

38. According to the management of institutions visited, the average duration of stay ranged from 10 to 15 years in the institution for children, and from 20 to 25 years in the institution for women. During the consultation of registers of an institution for women, it appeared that a high proportion of individuals had been institutionalized since early childhood and that the probability for them to remain there until their death was very high.

39. The Working Group underlines that the above-mentioned instances constitute a serious breach of international human rights standards, including those of the Convention on the Rights of Persons with Disabilities.

40. The delegation was informed that the institutionalization of persons with disabilities often results from the decision of parents, care institutions or social services. In some instances, families were not aware where their relatives had been placed. The management of one of the institutions informed the Working Group that in 2015, eight families discovered through a television programme that their family members had been placed in one of the centres.

41. From the information received from authorities, the delegation noted that adults and children with psychosocial disabilities had been confined without a clearly established procedure to exercise their right to challenge their placement and that their need to remain in such institutions was not regularly assessed. Moreover, the Working Group observed that there was a lack of accessible information for persons with disabilities on how to challenge their detention in a court. Persons whose legal capacity has been removed or restricted are

[20] See www.stat.gov.az/source/healthcare/?lang=en (Social security; Disability among population; Social service institutions for older people, disabled persons and children with limited health abilities).

denied the right to access a court on their own.[21] It therefore appeared that those persons had no possibility of being released. The Working Group could not obtain information as to their access to any effective remedy, including initial and periodic judicial review of the lawfulness of their detention and conditions of detention.[22]

42. While visiting psychiatric institutions, the Working Group was concerned that various restrictions were imposed on the freedom of movement of its residents. In an institution for women, some residents were placed in rooms behind bars, while other women with physical disabilities were accommodated on the fourth floor with no elevator. Further, while visiting an institution for children on a sunny afternoon, the Working Group did not see any child playing outside and was told that sun exposure might worsen the psychoneurological state of the children.

43. The Working Group also observed substandard living conditions in various psychiatric institutions. For instance, in an institution for women some of the residents were living in a building in a state of disrepair. The centre had entirely unhygienic and inadequate facilities with only 2 toilets and 2 showers per 50 women. The Working Group observed that there was no light in the toilets, no protection of privacy in the bathroom and waste water in the bathtubs. Most of the women were lying on their beds. There was no appropriate organized activity in the institution for these patients. The Working Group was particularly concerned to learn that a young woman with kidney problems had not been brought to a hospital and died in the institution shortly before the Group's visit.

44. The Working Group was alarmed to hear from the administration of one of the centres about the application of chemical restraints, accompanied in the case of children with "mild" electroshocks. The delegation was also informed of the general practice of forced medication in case of a refusal to take prescribed drugs, and of women being regularly given contraceptives in order for them "not to spread their disease".

45. With regard to the detention of persons in psychiatric institutions by judicial decision, the Working Group is aware that the Law on Psychiatric Assistance regulates the admission and treatment, including on an involuntary basis, of persons in psychiatric institutions under the Ministry of Public Health. The involuntary treatment of persons can be initiated following a judicial decision. The Working Group was informed that, at the initial court hearing, such persons are unable to challenge the hospital's decision by producing their own independent medical practitioner. Even at later review stages, independent expertise is rarely sought, which creates the conditions for indefinite detention. Furthermore, the delegation could not establish the existence of a consistent practice of ensuring that involuntary patients understand the scope of the court decision by, for example, providing them with a copy of the decision, as recommended by the Committee against Torture.[23] For instance, several persons interviewed by the delegation did not know how long they were expected to remain in the institution.

46. The Working Group observed that many patients in psychiatric institutions were held against their will. Even those who might have voluntarily entered the facilities could not leave freely. The Working Group did not receive any information on the establishment of an independent monitoring system for such facilities that would ensure that all places where people with intellectual and psychosocial disability are held for involuntary treatment are regularly visited to guarantee the proper implementation of the safeguards.

D. Deprivation of liberty in the context of the criminal justice system

47. Deprivation of liberty must at all times be objectively justified and the grounds for detention assessed, based on facts and not on a mere subjective suspicion. Liberty should therefore be the rule and detention the exception. In every place the delegation visited, it observed that many persons had been detained without a proper assessment of the need for

[21] Article 101 of the Criminal Procedure Code.
[22] See A/HRC/30/37, principle 20, and guideline 20.
[23] CAT/C/AZE/CO/4.

them to be detained and that detention, especially pretrial, lasted a very long time. The delegation also noted the existence of a high number of authorities with the power to deprive persons of liberty. Moreover, the Working Group observed that for the same offence, a person might be placed in detention under the responsibility of the Ministry of Justice, the Ministry of Internal Affairs and the State Security Service.

1. Legal definition of offences

48. According to international law, any grounds for arrest or detention must be prescribed by law and should be defined with sufficient precision to avoid an overly broad or arbitrary interpretation or application.[24] This specifically applies to the most serious crimes including terrorism,[25] and it also relates to various crimes in Azerbaijan as shown below.

2. Administrative offences

49. The delegation observed that, in Azerbaijan, persons could be deprived of liberty for both administrative and criminal offences.

50. Among the administrative offences defined in broad terms which may lead to arbitrary deprivation of liberty are the so-called offences of hooliganism and refusal to obey public authorities. In addition, sentences for these offences are often disproportionate. For instance, the Working Group learned about the case of two young men who were serving their sentences for disobeying the police. Both were having a verbal quarrel over the telephone in a park and, for failing to comply with the police's request to stop, were arrested and sentenced to 10 and 15 days of imprisonment respectively.[26]

51. The Working Group considers that there should be legal clarity as to what constitutes incriminating acts; proportionality between the offences and the related sentences; and strict separation between law enforcement agents and the prosecution authorities. Also, the principle of contradiction in criminal justice, whereby the accused person is provided with effective legal assistance and representation throughout the process, must be fully respected, including in cases of administrative offences.

3. Right to be informed of the charges

52. Everyone charged with a criminal offence shall be informed promptly and in detail in a language that he or she understands of the nature and cause of the charges brought against him or her.[27]

53. Infringement of this right occurs in practice, especially with regard to children, persons from disadvantaged backgrounds and low literacy skills, as well as foreign nationals. In particular, the delegation met with an adolescent who indicated that at the time of arrest, he was unable to understand anything in relation to his judicial process. Another detainee was requested to sign documents presented in Latin script that the authorities knew that he could not read.

54. The delegation also met a non-national in pretrial detention who explained that he did not understand Azerbaijani and still did not understand the reasons for his arrest because the interpreter did not provide sufficient information during the hearing. Nevertheless, he was forced to sign documents in Azerbaijani.

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[24] General comment No. 35 (2014) on liberty and security of person.

[25] See, for example, the joint study on global practices in relation to secret detention in the context of countering terrorism and the recommendations therein (A/HRC/13/42).

[26] Article 221.1 of the Criminal Code provides that "[h]ooliganism, that is the deliberate actions roughly breaking a social order, expressing obvious disrespect for a society, accompanying with application of violence on citizens or threat of its application, as well as destruction or damage of another's property ... is punished by public works for the term from hundred sixty up to two hundred, or corrective works for the term up to one year, or imprisonment for the term up to one year".

[27] See article 9 (2) of the International Covenant on Civil and Political Rights and A/HRC/30/37, annex, principle 7.

55. The Working Group was concerned about arrests for administrative offences and subsequent investigations under criminal charges. In particular, the Working Group met with six individuals of different nationalities who were detained for administrative offences, but investigated for other serious crimes. They were held in detention in the Investigation Isolator and Temporary Detention Facility of the State Security Service in Baku, which could reportedly only detain persons suspected of especially grave crimes such as terrorism, human trafficking, treason and drug-related crimes. None of these individuals was informed that investigations were being conducted against them in connection with crimes other than administrative offences.

4. Effective access to legal counsel and to legal aid

56. The right to legal assistance is an essential safeguard for individuals involved in any criminal justice process. Persons deprived of their liberty shall have the right to legal assistance by counsel of their choice, at any time during their detention, including immediately after the apprehension. Upon arrest, all persons must be promptly informed of this right.[28] This also applies in cases where the person is deprived of liberty for administrative offences. The delegation observed examples of the lack of implementation of these standards in practice.

57. Although both the Constitution and the Code of Criminal Procedure enshrine the right to legal assistance, in practice, the delegation received overwhelming information on the non-observance of this right, against the interests of both adult and juvenile offenders.

58. While interviewing detainees, the Working Group observed that many had never met with any lawyer. The majority of those who did have such a meeting were provided with a State lawyer and had no opportunity to choose their own counsel. Most of these detainees were not afforded the opportunity to meet with their lawyer in private at any stage of the process and/or only met with their lawyer during interrogations and court hearings, even when accused of the most serious offences. Such practices undermine the right to a fair and public hearing, guaranteed by the international instruments ratified by Azerbaijan.[29]

59. Much of the testimony collected during the mission shows that the only advice given to detainees by State lawyers was to cooperate with investigators and to confess to the commission of the offence for which they had been charged. Some detainees were not aware of the right to be legally assisted during judicial proceedings and to appeal a court decision.

60. The Working Group considers that this situation may be the result of either a low number of lawyers available to represent accused persons, the inability of lawyers to adequately advise individuals facing criminal justice or their possible lack of independence. The delegation received abundant information related to the denial or obstruction of the right of accused or convicted persons to be legally represented and to communicate freely with their lawyer, in particular by the administration of some detention centres, especially those dealing with the most serious offences.

61. The Working Group notes that such an assessment is contrary to the view expressed by the President of the Bar Association, who stated that there is currently no shortage of lawyers in the country and that anyone arrested gets proper legal assistance from the one thousand lawyers operating in the country. Yet, in Ganja, the second largest city in the country, public officials acknowledged shortcomings in this respect and stated the figure of only 40 lawyers practising in the region. In Nakhchivan Autonomous Republic, authorities similarly mentioned that the local Bar Association had only 20 registered lawyers. Consequently, there appear to be considerable inconsistencies between the information that the Bar Association has and what the delegation received in parts of the country.

62. In relation to the independence of the legal profession, the Working Group is concerned about information regarding certain disciplinary measures and, in particular, the

[28] A/HRC/30/37, annex, principle 9. See also article 14 (3) (d) of the International Covenant on Civil and Political Rights.

[29] Ibid., articles 14 (1) and (3) (d).

suspension and disbarment of two lawyers involved in cases of political activists. The Working Group has not received any information that could objectively justify these disciplinary sanctions and is convinced that such decisions adversely impact the independence of the legal profession in Azerbaijan.

5. Prohibition of torture and other forms of ill-treatment

63. The Working Group received much testimony from juveniles, women and men about torture and ill-treatment they had reportedly been subjected to while in the custody of different authorities.

64. In most cases, this practice sought to obtain confessions from detainees and/or coerce them to sign the police "protocols" for administrative offences. Such treatment was reported by persons currently or previously detained in all criminal justice detention places visited, except the Juvenile Detention Centre of Baku. Interviewees described guns pointed at their heads; prolonged severe beatings; verbal abuse and psychological pressure; practices such as making one kneel for long hours; and threats of physical and sexual violence; as well as threats to arrest family members.

65. In Ganja Pretrial Detention Facility No. 2, the delegation sought access to the basement where torture had been reported by highly reliable sources. When asked, public officials recognized misconduct by the previous administration, which had led to the ongoing legal proceedings against the previous head of the facility. However, the Working Group is also concerned that the conditions in which detainees, including children, are held in this facility amount per se to inhuman and degrading treatment. Such conditions included the state of disrepair of the buildings, substandard and unhygienic sanitation installations, the presence of rats in cells and an extreme lack of ventilation in overcrowded cells where inmates are forced to take turns sleeping.

66. The Working Group received information from officials that numerous investigations of torture were taking place, but nevertheless did not receive the exact data on the investigations conducted and their outcome, including sentencing of the perpetrators. The delegation also received frequent allegations that the Ombudsman hotline established to denounce instances of torture located in some of the facilities did not work. Furthermore, the delegation observed that in most of the detention centres it visited, posters with information about the hotline were non-existent or inaccessible to detainees.

67. In light of these observations, the Working Group recalls that everyone charged with a criminal offence has the right not be compelled to give incriminating evidence or to confess guilt. Any statement that is established to have been made or any other evidence obtained as a result of torture or other cruel, inhuman or degrading treatment shall not be accepted as evidence in any proceedings.[30] Anyone has the right not to testify against themselves.[31] The failure to observe these rights may result in arbitrary detention.

6. Right to be tried without undue delay and to be brought promptly before a judge

68. Everyone charged with a criminal offence has the right to be promptly brought before a judge and to be tried without undue delay.[32] Any delay beyond 48 hours before being presented to a judge after arrest and detention must remain exceptional and justified. Judicial authorities should ensure that the pretrial detention of an accused person does not exceed a reasonable time. These international norms are reflected in the Code of Criminal Procedure, which states that if no decision is taken within 24 hours of the person being detained, the person must be released immediately and even if such decision is taken, the detention of the person may not exceed 48 hours. Furthermore, the same Code establishes time limits of pretrial detention depending on the gravity of the crime, which can only be prolonged to 18 months for the completion of criminal investigations.

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[30] Article 15 of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (in full).

[31] Article 14 (3) (g) of the International Covenant on Civil and Political Rights.

[32] Ibid., art. 14 (3) (c).

69. The Working Group observed multiple instances when these legal provisions were not upheld in practice. For instance, the delegation gathered evidence of persons detained for several days in police stations and temporary detention facilities without being presented to a judge. Furthermore, the Working Group noted instances of judges extending pretrial detention without due assessment of the circumstances. In addition, in not a single instance examined by the Working Group, whether in the testimonies or interviews with authorities including the case law provided, had a detainee been questioned by the judge on his or her treatment in custody.[33]

7. Children's rights and juvenile justice system

70. In 1998, Azerbaijan adopted the Law on the Rights of the Child which contains guarantees in line with international juvenile justice standards, except for pretrial detention. In practice, however, the delegation could note observe a significant difference between the treatment of children and adults in the criminal justice system. It observed the punitive nature of the criminal justice system towards children, especially during its visit to the Juvenile Detention Centre of Baku and to the juvenile section of the Ganja Detention Centre.

71. Out of the 35 children held in Baku, one third had been convicted as primary offenders for minor offences such as robbery, intimidation or theft of a vehicle and condemned to harsh sentences of up to seven years of imprisonment. One child was serving a six-year sentence for driving a vehicle in a state of intoxication.

72. The Working Group could not obtain information on the availability or development of alternatives to detention such as educational measures, referral to social services and probation or community-based diversion programmes. Moreover, the delegation understood from an official that for certain grave crimes, the detention of the child was even considered compulsory.

73. The delegation also gathered information on serious violations of the right of children to a fair trial. None of the interviewed children was given access to a lawyer upon arrest, properly informed about the charges, questioned in presence of at least one of his or her parents or given access to a doctor. Although, according to domestic law, no child should be detained more than 24 hours without a judicial order, all interviewed juveniles spent much lengthier periods in police custody. The Criminal Code provides that criminal proceedings concerning children shall be conducted without delay. There is, however, no specific limitation of pretrial detention for children and the delegation met many who had spent considerable time in pretrial detention.

74. Mistreatment of detained children appears to be widespread. Many children reported ill-treatment upon arrest. One child indicated that he was forced to kneel for two days until investigators obtained his confession. Children are also likely to become victims of mistreatment by other inmates. There is no specific facility for children in police stations and the delegation observed in Ganja that children were detained in a cell close to adult detainees and were in regular contact with them, contrary to applicable international standards.[34]

75. The only detention facility for convicted juveniles is located in Baku, far from families of those children from other parts of the country. This situation precludes some of these children from maintaining family relations. Isolated from their family, they are unlikely to get any support and to defend their rights. This situation also makes it difficult for these juveniles to reintegrate in the society after serving their sentence.

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[33] The Working Group received a set of judicial decisions from public officials who argued that the law was respected but in not one of those decisions could the Working Group find any information in such regard. The facts in those decisions confirmed that the strict timeline was not complied with.

[34] The Convention on the Rights of the Child, to which Azerbaijan is a party since 1992, requires in its article 37 (c) that "[e]very child deprived of liberty shall be treated with humanity and respect for the inherent dignity of the human person ... in particular, every child deprived of liberty shall be separated from adults unless it is considered in the child's best interest not to do so".

76. Finally, when visiting the pretrial prison in Ganja, the Working Group observed that some juveniles in this detention facility were held in substandard conditions, which posed a danger to their health. During its interactions with juveniles deprived of their liberty, the Working Group did not observe any educational programmes or recreational activities.

8. Allegations of corruption of law enforcement authorities and the judiciary

77. The Working Group is concerned about the high number of accounts it received from persons suspected or accused of an offence, who were allegedly victims of corruption by law enforcement officials or judicial authorities.

78. The delegation was informed by a juvenile that his mother had been requested by the Prosecutor's Office to pay in order to have the charges against him softened. As she refused, the prosecutor reportedly appealed the conditional sentence pronounced by the first instance magistrate and obtained a six-year prison sentence from the appellate court. This sentence was later reduced by half by the Supreme Court. The Working Group was also informed of a case when the police demanded a bribe for minor administrative infringement and the failure to bring the requested amount led to charges against the person before a court of first instance.

79. Information was also received about officials from several detention facilities reportedly being involved in extorting money in exchange for services within the facilities, including family visits and the permission to receive parcels. For instance, in the detention facility in Ganja, inmates reported that money (70 manats, equivalent to approximately 42 United States dollars) was being requested for family visits. As a result, some parents could not see their children.

E. Deprivation of liberty in the context of the rights to freedom of opinion and expression, and to peaceful assembly and association

80. During its visit, the Working Group gathered information from various sources that human rights defenders, journalists, political opponents and religious leaders who criticize the Government and its policies face limitations to their work and personal freedom. Additionally, the Working Group was made aware of at least 70 such individuals who were reportedly detained on charges that included drugs- and arms-related offences, hooliganism and tax evasion. The delegation also learned that lawyers who assisted in bringing cases of human rights defenders to the European Court of Human Rights had been detained on charges of tax evasion, illegal entrepreneurship and abuse of authority. The Working Group met and interviewed some of these persons in detention facilities, as well as those who had already served their sentences or who had been pardoned. It received repeated allegations of the lack of legal basis justifying the deprivation of liberty as well as of violations of due process rights, constituting prima facie breaches of international law, including attempts to extract confessions through the use of force, to pressure witnesses to testify against defendants and the lack of genuine judicial review of the lawfulness of detentions.

81. Furthermore, the Working Group was informed that on 10 May 2016, two students were arrested shortly after they drew graffiti on a statue of the former President of Azerbaijan in the centre of Baku, reportedly as a form of political protest. Both have subsequently faced drug-related charges and were reported to have been subjected to violent interrogation techniques at a police station before being placed by the Khatai District Court under pretrial detention for a period of four months. The Working Group visited the two students in the Kurdakhani Pretrial Detention Facility and observed possible physical sequels of such ill-treatment, in the form of visible marks on parts of their bodies. Purportedly, judges who saw these two students after the arrest did not react to their allegations of ill-treatment.

82. The Working Group notes that over the past years, the European Court of Human Rights has considered a number of cases from Azerbaijan concerning the detention of

individuals expressing opinions not in line with those of the ruling political establishment.[39] The Court's jurisprudence points to a pattern of unlawful deprivation of liberty of such individuals and of interference with their freedom of expression, assembly and political participation. In December 2015, the Council of Europe Secretary General launched an inquiry under article 52 of the European Convention on Human Rights into compliance by Azerbaijan with its commitments under the Convention, including the failure of Azerbaijan to carry out the rulings of the European Court of Human Rights.

61. The Working Group also recalls its own opinions whereby it found detentions of members of minority religious community as well as of a journalist and a human rights defender to be arbitrary, falling within categories II, III and V.[40] There have also been several joint urgent appeals of special procedure mandate holders concerning alleged arbitrary detentions of human rights defenders, youth activists and journalists.[41]

62. In 2015, the Committee against Torture expressed its serious concerns about amendments to the Code of Administrative Offences extending the maximum period of administrative detention from 15 days to two months, notably for those violating the rules on holding rallies,[42] and the punishment of members of civil society with heavy prison sentences.[43] Earlier, the European Commissioner for Human Rights had expressed concerns about the Law on Freedom of Assembly and the Criminal Code, as well as the Code of Administrative Offences.[44]

63. The Working Group notes that the Human Rights Committee has also expressed concerns at "[c]onsistent reports of intimidation and harassment, including arbitrary arrest and detention, ill-treatment and conviction of human rights defenders, youth activists, political opponents, independent journalists and bloggers on allegedly politically motivated trumped-up administrative or criminal charges of hooliganism, drug possession, economic crimes, tax evasion, abuse of office, incitement to violence or hatred".[45] The Committee called on the authorities to "take immediate steps to end any repression against [these] categories of persons" and to "take all measures necessary to guarantee the full enjoyment of freedom of expression by everyone in practice".[46]

V. Conclusions

64. **The Working Group welcomes the fact that Azerbaijan has embarked on a series of reforms aimed at bringing the administration of justice in line with international human rights standards, namely the prison and judicial system reforms as well as improvement of the legislative framework. Nevertheless, the situation in Azerbaijan presents several matters of concern, particularly in regard to the deprivation of liberty on health-related grounds, in the context of the criminal justice**

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[39] *Ilgar Mammadov v. Azerbaijan* (Application No. 15172/13); *Mahalis Ismayilova v. Azerbaijan* (Application No. 30778/15); *Rasul Jafarov v. Azerbaijan* (Application No. 69981/14); *Ibrahimov and Others v. Azerbaijan* (Applications nos. 69234/11, 69235/11 and 69335/11); *Hasanov and Others v. Azerbaijan* (Applications nos. 67360/11, 67906/11 and 69370/11); *Yagublu v. Azerbaijan* (Application No. 31709/13); *Gafgaz Mammadov v. Azerbaijan* (Application No. 60259/11); *Mehdiyev v. Azerbaijan* (Application No. 59075/09); *Emin Huseynov v. Azerbaijan* (Application No. 59135/09); and *Zeynalov v. Azerbaijan* (Application No. 37848/08).

[40] See the methods of work of the Working Group on Arbitrary Detention (A/HRC/33/66).

[41] See Opinion No. 42/2015 (Azerbaijan); Opinion No. 59/2013 (Azerbaijan); Opinion No. 22/2011 (Azerbaijan); JUA 22/03/2012 Case No. AZE 2/2012; JUA 01/02/2013 Case No. AZE 2/2013; JUA 26/07/2013 Case No. 4/2013; JUA 13/02/2015 Case No. AZE 1/2015; and JUA 19/08/2015 Case No. AZE 3/2015.

[42] These amendments to the Code of Administrative Offences were adopted by the Parliament on 14 May 2013.

[43] CAT/C/AZE/CO/4, para. 10.

[44] Report by the Commissioner for Human Rights of the Council of Europe, following his visit to Azerbaijan from 22 to 24 May 2013 (CommDH(2013)14).

[45] CCPR/C/AZE/CO/4, para. 36 (a).

[46] *Ibid.*, para. 37.

as well as the detention of individuals expressing opinions that are not in line with those of the Government.

67. The Working Group observes that human rights defenders, journalists, political and religious leaders continue to be regularly detained under criminal or administrative charges. These practices are contrary to the obligations of Azerbaijan under international human rights law.

68. There is currently no functional juvenile justice system and legislative efforts are yet to be translated into practice. Children in conflict with the law are treated as adult offenders. International juvenile justice standards are disregarded in practice and legal proceedings against children do not meet international safeguards. Even for children who have committed minor offences, detention is, most of the time, the only available option.

69. The Working Group notes that Azerbaijan has ratified the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and that the Office of the Commissioner for Human Rights of the Republic of Azerbaijan was designated as its National Preventive Mechanism under its terms. The Working Group noted however the absence of the requisite independent oversight in variety of detention places and is mindful that such independent oversight, which must be ensured as per the terms of the Optional Protocol, makes an important contribution towards both the detection and prevention of instances of arbitrary detention.

VI. Recommendations

90. On the basis of its findings and in a spirit of cooperation, the Working Group calls on the Government to ensure that the positive legislative and institutional developments regarding deprivation of liberty described in the present report are accompanied by effective implementation measures in compliance with international human rights standards.

91. To this end, the Working Group makes the following recommendations to the Government:

(a) Ensure that any detention as a result of criminal activities shall be under the control of the prosecutorial authority with the oversight of the judiciary;

(b) Ensure that the judiciary exercises the necessary oversight and control of all situations of deprivation of liberty and that a person deprived of liberty is able to challenge the legality of such detention before a competent judicial authority, with fully granted legal assistance for that purpose, and that the judicial authority is able to order the release;

(c) Take necessary measures to ensure that the Public Affairs Committee has sufficient independence in order to play a more effective role. Such autonomy will allow it to assist the Government in the oversight of all situations of deprivation of liberty;

(d) Ensure that the National Preventive Mechanism is able to and in fact discharges its mandate independently and that the respective authorities engage with the Mechanism constructively on the implementation of its recommendations;

(e) Fully enforce the decisions of the European Court of Human Rights. Such enforcement entails both paying the necessary reparations to the victims but more importantly ending the arbitrary deprivation of liberty and ensuring the guarantee of non-repetition;

(f) Take decisive measures to ensure that the Nakhichevan Autonomous Republic is subject to closer scrutiny by national authorities and by external oversight mechanisms, such as the Council of Europe and the United Nations special procedures.

97. In relation to the criminal justice system, the Working Group recommends that the Government:

(a) Take necessary steps to ensure that offences are precisely defined in national legislation in order to uphold the principle of legality and, in this context, review and amend the current definition of, inter alia, terrorism and administrative offences;

(b) Ensure that detention is not the general practice in the criminal justice system, especially if one has not yet been convicted, and ensure that the need for pretrial detention is determined on an individual basis and used solely for the purpose of ensuring that the accused does not jeopardize the evidence or endanger the victim, witnesses or the community, and remains available for trial. Pretrial detention should also be limited to serious offences which would carry a sentence of imprisonment;

(c) Use alternatives to detention, in accordance with the United Nations Standard Minimum Rules for Non-custodial Measures (the Tokyo Rules), and in relation to the pretrial stage, establish a system for arranging bail and making more frequent use of non-custodial measures in the case of less serious offences.

98. In relation to fundamental legal safeguards, the Working Group recommends that Government:

(a) Ensure that all suspects benefit from other basic safeguards provided for by law, which include their right to be examined by an independent physician in full confidentiality; to contact a relative or friend; to be informed of their rights and the charges against them; and to be brought before a judge without delay. It also recommends that the Government ensure that any public official who denies fundamental legal safeguards to persons deprived of their liberty is disciplined or prosecuted;

(b) Systematically inform all individuals deprived of their liberty, in writing and in a language they understand, of the reason for their detention, of their rights and how to exercise them. This includes their right to have access to a lawyer and the right to promptly challenge their detention.

99. In relation to access to legal counsel, the Working Group recommends that the Government:

(a) Ensure that relevant legal provisions are strictly enforced to guarantee access to legal counsel from the outset of a person's deprivation of liberty and subsequently throughout the entire period of detention. This includes providing detainees with means to contact legal counsel of their choice;

(b) Guarantee that all persons deprived of liberty have access to effective and prompt legal aid to ensure that the unaffordable cost of legal counsel does not prevent a barrier to a detainee without adequate means, or his or her representative, to bring proceedings before a court;

(c) Ensure that the confidentiality of communications between persons deprived of liberty and their legal counsel is respected, including meetings, correspondence, telephone calls and other forms of communications. In the event that such confidentiality is broken, any information obtained shall be considered inadmissible as evidence in court;

(d) Ensure that sufficient safeguards are in place, both in law and in practice, to guarantee the full independence of lawyers. In this respect, refrain from any actions that may constitute harassment, persecution or undue interference in the work of lawyers, including their suspension, disbarment or other disciplinary action, and ensure that they are trained on a continuous basis with regard to their ethical obligations and independence;

(e) Sustain efforts to address the shortage of lawyers, including by ensuring that admission to the Bar can only be denied on the basis of objective criteria such as relevant knowledge and qualifications; ensure that lawyers providing legal aid are

properly remunerated and that State-appointed defence lawyers provide adequate legal representation.

95. **In relation to allegations of torture and forced confessions, the Working Group recommends that the Government:**

(a) **Take immediate measures to combat torture and end the practice of impunity, and ensure, in law and in practice, that every person has access to independent complaints mechanisms that will effectively investigate and respond promptly; that alleged perpetrators are prosecuted and, if they are found guilty, receive sentences that are commensurate with the gravity of their acts; and that victims are afforded appropriate redress;**

(b) **Revise the current approach of the confessions-based criminal justice system which incentivizes law enforcement officials to extract confessions, and ensure that the law enforcement officials have effective access to and the know-how to use modern approaches to crime-solving, thus removing the need to secure confessions from suspects;**

(c) **Deliver a clear message through appropriate channels and take immediate steps to ensure that, in practice, statements made as a result of torture or other cruel, inhuman or degrading treatment may not be invoked as evidence in any proceedings, except against the person accused of such torture; review cases of convictions based solely on confessions, recognizing that many of these may have been based upon evidence obtained through torture or ill-treatment, and, as appropriate, provide prompt and impartial investigations and take appropriate remedial measures; and ensure that any persons convicted on the basis of coerced evidence or as a result of torture or ill-treatment are afforded new trials and adequate redress.**

96. **In relation to conditions of detention, the Working Group recommends that the Government, in order to strengthen due process guarantees, intensify efforts to address overcrowding in places of detention, including by resorting to non-custodial alternative measures to detention, combat corruption within prison facilities and improve conditions of detention in accordance with the Covenant and the United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).**

97. **In relation to allegations of corruption, the Working Group recommends that the Government establish a comprehensive system to address corruption in the judicial system, including among judges, law enforcement officials and prison staff, which might lead to arbitrary detention. Such a system should include a mechanism for reporting instances of corruption without jeopardizing the safety of the detainees as well as efforts to effectively prosecute and appropriately punish perpetrators. The Government should ensure that the subject of fighting corruption is part of the training curriculum for judges, law enforcement officials and prison staff.**

98. **The Working Group recommends that the Government undertake legislative and institutional reform aimed at designing a comprehensive juvenile justice system in full accordance with international norms, and that it:**

(a) **Ensure that arrest, detention or imprisonment of a child is used only as a measure of last resort and for the shortest appropriate period of time. The detention of juveniles should be limited to the most exceptional instances;**

(b) **Develop a wide range of alternatives to the detention as well as measures to ensure the best interest of the child, as well as to guarantee that children are treated in a manner appropriate to their well-being, and proportionate to both their circumstances and the offence committed. These should include care, guidance and supervision, counselling, probation, foster care, educational programmes, and other alternatives to institutional care;**

(c) **Ensure the exercise of the right to challenge the arbitrariness and lawfulness of the detention of children and render it accessible, age appropriate, multidisciplinary, effective and responsive to the specific legal and social needs of**

children. Authorities overseeing the detention of children should ex officio request courts to review the lawfulness of their detention. This practice should not exclude the right of any child deprived of liberty to bring such proceedings before a court in his or her own name or, if it is in his or her best interests, through a representative or an appropriate body;

(d) Ensure due process for children deprived of their liberty, including ensuring that children are able to contact their parents or guardians immediately and are able to consult with them freely and in full confidentiality; the provision of legal or other appropriate assistance free of charge in all proceedings and ensuring that information on rights is provided in a manner appropriate for the child's age and maturity, in language, means, modes and formats that the child can understand and in a manner that is gender- and culture-sensitive;

(e) Ensure that national laws stipulate measures aimed at the prevention of ill-treatment or intimidation of a child in detention, and provide for sanctions of persons in violation of such laws;

(f) Ensure that juveniles are effectively separated from adults in all detention places. Safe, child-sensitive environments for children deprived of their liberty should be established. Detained children should be treated with dignity and respect, and in a manner that takes into account any element leading to vulnerability, and all children in detention must have effective access to education and recreation.

99. In relation to migrants, asylum seekers and refugees, the Working Group recommends that the Government ensure that:

(a) Detention of asylum seekers and other non-citizens is only used as a measure of last resort, and then only for the shortest possible time, following an individual assessment of the necessity and proportionality of detention;

(b) Immigrants facing expulsion, deportation and especially detention, however temporary, are given access to justice, with necessary legal assistance to enable them to challenge their detention in a court of law;

(c) Detainees are held in special immigration detention centres in conditions appropriate for their status as non-convicted persons, and not together with persons charged with or convicted of criminal offences (unless so charged or convicted themselves);

100. The Working Group recommends that the Government:

(a) Investigate promptly, thoroughly and impartially all allegations of arbitrary arrest and detention of human rights defenders, journalists, political opponents and religious leaders; and prosecute and punish appropriately those found guilty and provide victims with redress;

(b) Guarantee that these individuals are able to carry out their legitimate work in a safe and enabling environment without fear of threats or acts of intimidation and harassment of any sort, and release those who have been deprived of their liberty in retaliation for their professional activities.

101. In relation to the deprivation of liberty of persons with disabilities, the Working Group recommends that the Government:

(a) Undertake sustained efforts aimed at ending the practice of institutionalization of persons with psychosocial disabilities, and take necessary steps to prohibit involuntary internment and forced treatment on the grounds of the existence of an impairment or perceived impairment, particularly on the basis of existing or perceived psychosocial or intellectual disability;

(b) Ensure that the deprivation of liberty of a person with a disability is required to be in conformity with the law, including international law, offering the same substantive and procedural guarantees available to others and consistent with the right to humane treatment and the inherent dignity of the person;

(c) **Ensure that persons with psychosocial or intellectual disabilities deprived of liberty are duly informed of their right to challenge the decision, in order to enable them to exercise their prior and informed consent, and are provided with appropriate support;**

(d) **Establish a mechanism complete with due process of law guarantees to review cases of placement of persons with disabilities in any situation of deprivation of liberty without specific, free and informed consent. Such reviews are to include the possibility of appeal;**

(e) **Enact an enforceable right for persons with psychosocial or intellectual disabilities to live in the community and be provided with health services that are free from coercion and restriction; additionally, ensure that legislation and practice relating to any hospitalization of persons respect due process guarantees;**

(f) **Provide procedural accommodation for persons with disabilities as well as accessibility and reasonable accommodation for the exercise of the substantive rights of access to justice and equal recognition before the law, and, to this end, expand access to the treatment of psychosocial or intellectual disabilities outside the criminal justice system and develop pre-arrest and pretrial intervention programmes aimed at preventing the incarceration of persons in need of mental health treatment.**[47]

[47] See A/HRC/30/37, para. 69.

Annex

Detention facilities visited

Baku

- Prison No. 2
- Psychiatric care institution Republican Psychiatric Hospital No. 1
- Women's Prison No. 4
- Juvenile Detention Centre of Baku
- Kurdakhani Detention Centre (Baku Investigative Prison No. 1)
- Residential institution No. 7 for children with disabilities
- Gabu special boarding school
- Principal Department on the Fight against organized crime
- Temporary Detention Center and Pre-trial Prison of the State Security Service
- Kurdakhani Center for Irregular Migrants
- Nizami District Police Station

Ganja

- Psychiatric hospital of Ganja
- Göygöl District Psychoneurological Boarding Home No. 8
- Kapaz Police Division
- Ganja City Police Station
- Ganja Investigatory Isolation Ward
- Pre-trial detention facility (Investigative Isolator/SIZO) No. 2
- Main City Police Department and temporary detention centre of Ganja/Kapaz

Nakhchivan

- Disciplinary unit of Nakhchivan Garrison
- Temporary detention centre for persons who have violated the border regime
- Psychiatric hospital Nakhchivan
- Prison in Kengerli, Boyuk duz